

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	
JONG H. KWAK)	Case No. AC-2001-15
3600 Wilshire Blvd., #730)	
Los Angeles, California 90010)	OAH No. L20011120561
)	
Respondent.)	
)	

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on June 4, 2002.

Complainant, Carol B. Sigmann, was represented by Michel W. Valentine, Deputy Attorney General.

Respondent, Jong H. Kwak ("Respondent") appeared and was represented by Nathan J. Hochman, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The California Board of Accountancy makes the following factual findings.

1. Carol B. Sigmann made and filed the Accusation in her official capacity as Executive Officer of the California Board of Accountancy ("the Board"), Department of Consumer Affairs, State of California.
2. On May 22, 1990, Certificate No. 55696 (Certified Public Accountant) was issued by the Board to Respondent. The license expired on June 30, 1991, and was renewed effective August 2, 1991. It expired again on June 30, 2001, and was renewed effective September 14, 2001. The license will expire on June 30, 2003 unless renewed.

3. On July 31, 2000, in United States District Court, Central District of California, in Case No. CR 00-292-SVW, respondent was convicted, on his plea of guilty, of violation of 26 U.S.C. section 7207 (Delivering Fraudulent Documents to the Internal Revenue Service), a crime substantially related to the qualifications, functions and duties of a certified public accountant.

4. Respondent was placed on probation for a period of one year under various terms and conditions including but not limited to performance of 200 hours of community service, payment of a \$5000.00 fine and payment of a \$25.00 special assessment. He was also prohibited from serving as a "paid tax preparer" during the course of probation. Respondent timely complied with all the terms and conditions of probation and, on July 30, 2001, his probation terminated.

5. The facts and circumstances underlying the conviction were set forth in the written plea agreement Respondent signed on March 17, 2002, in connection with the criminal matter pending against him. Respondent stipulated to that statement of facts. The facts contained therein are repeated verbatim below and are incorporated as factual findings herein:

"On January 17, 1995, the Internal Revenue Service (IRS) notified Dong Chol Kim and Myung Sook Kim, a married couple who owned three retail women's clothing stores, that their 1992 tax return had been selected for an audit. On January 17, 1995, the IRS requested that Dong and Myung Kim make available to the IRS all books and records concerning the Kim's income, expenses, and deductions from both the Kims' business and personal accounts.

"In or about February or March, 1995, the Kims hired defendant [Respondent], a certified public accountant, to represent them in the IRS audit. On April 24, 1995, the IRS requested all the Kims' invoices for the purchase of goods sold at the Kims' three stores. On May 11, 1995, defendant gave the Kims' 1992 check and combination check and cash purchase invoices to the IRS.

"On May 23, 1995, the IRS notified the Kims that the Kims' 1993 tax return would also be audited and requested that the Kims provide a copy of all their 1993 purchase invoices. On August 17, 1995, the IRS again requested all the Kims' 1993 purchase invoices.

"Between February or March, 1995, and August 2, 1995, the Kims provided to defendant all the Kims' 1992 and 1993 purchase invoices, including the cash only purchase invoices, and the 1992 and 1993 daily cash register tapes for all three of the Kims' stores. Myung Sook Kim and defendant agreed to provide only the Kims' check and combination check and cash purchase invoices to the IRS. Myung Sook Kim and defendant

agreed not to provide the Kims' cash only purchase invoices and the 1992 and 1993 daily cash register tapes to the IRS.

"On August 22, 1995, defendant delivered to the IRS the Kims' check and combination check and cash purchase invoices for tax year 1993. Defendant willfully withheld the Kims' cash only purchase invoices for tax year 1993 from the IRS. Consequently, the purchase invoices that defendant delivered to the IRS on August 22, 1995, were fraudulent as to a material matter in that they purported to represent all the purchase invoices for the Kims for tax year 1993, when in fact, as defendant well knew, the invoices failed to disclose the Kims' cash only purchase invoices for tax year 1993.

"On July 31, 1996, IRS criminal Investigation Division agents interviewed defendant and agreed to pick up all the Kims' documents from defendant the following morning. On July 31, 1996, Myung Sook Kim retrieved the 1992 and 1993 daily cash register tapes from defendant and never gave those tapes to the IRS. Prior to the arrival of IRS agents on August 1, 1996, defendant placed the Kims' 1992 and 1993 cash only purchase invoices in a box near the dumpster in the enclosed trash area in the parking lot behind defendant's building in Los Angeles, California. The invoices were picked up by garbage retrieval personnel and were never given to the IRS."

6. At the time he provided the records to the IRS and placed other records near his dumpster, respondent was aware of his wrongdoing. Three or four years thereafter, a criminal investigation regarding the Kims was initiated. At that time, respondent voluntarily admitted to the IRS that he had given the IRS only partial records. He then cooperated in the investigations performed by the IRS and the United States Attorney's Office regarding the Kims' audit. Although never required to do so, he voluntarily appeared at several meetings connected with those investigations. Respondent no longer has either a personal or a professional relationship with the Kims.

7. Respondent is 43 years old. He came to this country from his native Korea in 1983 having already received an undergraduate degree in metallurgy. From June of 1985 to June of 1987, he attended California State University at Northridge where he earned a master's degree in Business Administration. He supported himself during that time period by working as a janitor and a tutor.

8. Respondent has been married to his wife for 18 years. They have two children, ages 12 and 15. Respondent is and has been the sole support of his family.

9. Respondent is very active in his church where he serves as a Deacon. For the past five years, he has served as the church's treasurer. That position requires him to

spend 304 hours after church each week performing bookkeeping services and other administrative duties.

10. Respondent enjoys an excellent reputation in his community for honesty and integrity. He has had no other negative involvement in the criminal justice system and has not had his CPA license subject to discipline before or since the filing of the instant Accusation.

11. Respondent accepts full responsibility for his wrongdoing. He is extremely remorseful for his lack of good judgment and for his criminal conduct. He has made changes in his accountancy practice in order to ensure that no similar conduct ever occurs. For example, he left his sole practice and entered a practice with three other CPAs. This enables him to question his partners on various issues so as to avoid mistakes. He also tells each of his clients that he will represent only the truth to governmental agencies.

12. Pursuant to Business and Professions Code section 5107, Complainant's counsel requested that Respondent be ordered to pay to the Board \$5,730.60 for its costs of investigation and prosecution of the case. Respondent's counsel objected to Complainant's Certification of Costs. As determined by the Administrative Law Judge, the requested costs are reduced to \$1,231.30.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the California Board of Accountancy makes the following legal conclusions:

1. Cause exists for the suspension or revocation of Respondent's Certified Public Accountant Certificate pursuant to Business and Professions Code sections 490 and 5100(a), for conviction of a crime, as set forth in Findings 3, 4, 5, and 6.

2. Cause exists for the suspension or revocation of Respondent's Certified Public Accountant Certificate pursuant to Business and Professions Code section 5100(i), for knowingly preparing and disseminating false, fraudulent and materially misleading financial information, as set forth in Findings 3, 5 and 6.

In August of 1995, respondent violated the public trust in a manner directly related to the qualifications, functions and duties of a certified public accountant. The conduct of a CPA who intentionally defrauds the IRS can neither be excused nor condoned. Respondent, however, does not offer an excuse and does not seek to have his conduct condoned. Rather, he admits his culpability and accepts full responsibility for it.

Respondent has made substantial strides toward rehabilitation by, among other things, completing his probation without incident and changing his professional practice in a manner calculated to minimize the risk of recurrence. The success of those changes is

evidenced by the fact that no other incidents of inappropriate practice have come to light since 1995. These factors, coupled with his acceptance for responsibility for his wrongdoing, militate against outright revocation of his certificate.

Nonetheless, one troubling factor remains. Respondent's motives and reasoning for his criminal conduct were never made clear. Certainly, his actions were not part of an overall pattern of practice. In fact, they were limited to the services of only one client. However, no explanation was offered for either respondent's decision to provide the IRS with only limited documentation when full documentation was available and within his custody, possession and control, or for his decision to place some of the documents near the dumpster where they stood an excellent chance of permanent removal from the premises. Absent an understanding of his motives, it is difficult to feel confident that Respondent is completely rehabilitated and that he runs a minimal risk of recidivism.

In light of the above, although outright revocation would constitute overly harsh discipline, a properly conditioned probationary license is necessary to adequately protect the public interest. A substantial period of actual suspension must necessarily be included in the terms of probation in order to give Respondent the opportunity to reflect on the importance of complete honesty and integrity in his profession.

4. As determined by the Administrative Law Judge, cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 5107, in the amount of \$1,231.30, as set forth in Finding 12.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant License No. 55696 issued to respondent, Jong H. Kwak, is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Respondent's license shall be actually suspended for a period of 90 days commencing on the effective date of this decision. During the period of suspension, respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as

are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of Respondent's compliance with probation terms and conditions.

6. Respondent shall be subject to, and shall permit, a practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Respondent shall comply with all final orders resulting from citations issued by the Board of Accountancy.

8. In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination within ninety (90) days of the effective date of this Order. If Respondent fails to pass the examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes and successfully passes the exam, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Notwithstanding any other provision of this probation, failure to take


and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

11. Respondent shall reimburse the Board \$1,231.30 for its investigation and prosecution costs. The payment shall be made within 120 days of the date the Board's decision is final.

12. Upon successful completion of probation, Respondent's license will be fully restored.

This decision shall become effective on December 11, 2002.

DATED: December 6, 2002



WENDY S. PEREZ, President
California Board of Accountancy

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Accusation
against:

JONG H. KWAK
Suite 730
3600 Wilshire Blvd.
Los Angeles, CA 90010

Certificate No. 55696

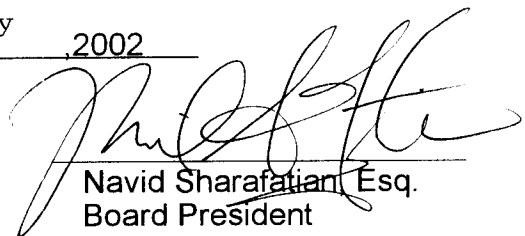
) Case No.: No. AC-2001-15
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) OAH No. L 2001120561
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Respondent.

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon the record, including the transcript of the hearing held on June 4, 2002, and upon such written argument as the parties may wish to submit. The Board is particularly interested in written argument directed to the question whether the penalty should be increased. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 31 day of July , 2002


Navid Sharafatian, Esq.
Board President

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**JONG H. KWAK
3600 Wilshire Blvd., #730
Los Angeles, California 90010**

Respondent.

Case No. AC-2001-15

OAH No. L2001120561

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California on June 4, 2002.

Complainant, Carol B. Sigmann, was represented by Michel W. Valentine, Deputy Attorney General.

Respondent, Jong H. Kwak ("Respondent") appeared and was represented by Nathan J. Hochman, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings.

1. Carol B. Sigmann made and filed the Accusation in her official capacity as Executive Officer of the California Board of Accountancy ("the Board"), Department of Consumer Affairs, State of California.

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2. On May 11, 1990, Certificate No. 55696 (Certified Public Accountant) was issued by the Board to Respondent. The license expired on June 30, 1991 and was renewed effective August 2, 1991. It expired again on June 30, 2001 and was renewed effective September 14, 2001. The license will expire on June 30, 2003 unless renewed.

3. On July 31, 2000, in United States District Court, Central District of California, in Case No. CR 00-292-SVW, Respondent was convicted, on his plea of guilty, of violation of 26 U.S.C. section 7207 (Delivering Fraudulent Documents to the Internal Revenue Service), a crime substantially related to the qualifications, functions and duties of a certified public accountant.

4. Respondent was placed on probation for a period of one year under various terms and conditions including but not limited to performance of 200 hours of community service, payment of a \$5000.00 fine and payment of a \$25.00 special assessment. He was also prohibited from serving as a "paid tax preparer" during the course of probation. Respondent timely complied with all the terms and conditions of probation and, on July 30, 2001, his probation terminated.

5. The facts and circumstances underlying the conviction were set forth in the written plea agreement Respondent signed on March 17, 2000, in connection with the criminal matter pending against him. Respondent stipulated to that statement of facts. The facts contained therein are repeated verbatim below and are incorporated as factual findings herein:

"On January 17, 1995, the Internal Revenue Service (IRS) notified Dong Chol Kim and Myung Sook Kim, a married couple who owned three retail women's clothing stores, that their 1992 tax return had been selected for an audit. On January 17, 1995, the IRS requested that Dong and Myung Kim make available to the IRS all books and records concerning the Kims' income, expenses, and deductions from both the Kims' business and personal accounts.

"In or about February or March, 1995, the Kims hired defendant [Respondent], a certified public accountant, to represent them in the IRS audit. On April 24, 1995, the IRS requested all the Kims' invoices for the purchase of goods sold at the Kims' three stores. On May 11, 1995, defendant gave the Kims' 1992 check and combination check and cash purchase invoices to the IRS.

"On May 23, 1995, the IRS notified the Kims that the Kims' 1993 tax return would also be audited and requested that the Kims provide a copy of all their 1993 purchase invoices. On August 17, 1995, the IRS again requested all the Kims' 1993 purchase invoices.

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“Between February or March, 1995, and August 2, 1995, the Kims provided to defendant all the Kims’ 1992 and 1993 purchase invoices, including the cash only purchase invoices, and the 1992 and 1993 daily cash register tapes for all three of the Kims’ stores. Myung Sook Kim and defendant agreed to provide only the Kims’ check and combination check and cash purchase invoices to the IRS. Myung Sook Kim and defendant agreed not to provide the Kims’ cash only purchase invoices and the 1992 and 1993 daily cash register tapes to the IRS.

“On August 22, 1995, defendant delivered to the IRS the Kims’ check and combination check and cash purchase invoices for tax year 1993. Defendant willfully withheld the Kims’ cash only purchase invoices for tax year 1993 from the IRS. Consequently, the purchase invoices that defendant delivered to the IRS on August 22, 1995, were fraudulent as to a material matter in that they purported to represent all the purchase invoices for the Kims for tax year 1993, when in fact, as defendant well knew, the invoices failed to disclose the Kims’ cash only purchase invoices for tax year 1993.

“On July 31, 1996, IRS Criminal Investigation Division agents interviewed defendant and agreed to pick up all the Kims’ documents from defendant the following morning. On July 31, 1996, Myung Sook Kim retrieved the 1992 and 1993 daily cash register tapes from defendant and never gave those tapes to the IRS. Prior to the arrival of IRS agents on August 1, 1996, defendant placed the Kims’ 1992 and 1993 cash only purchase invoices in a box near the dumpster in the enclosed trash area in the parking lot behind defendant’s building in Los Angeles, California. The invoices were picked up by garbage retrieval personnel and were never given to the IRS.”

6. At the time he provided the records to the IRS and placed other records near his dumpster, Respondent was aware of his wrongdoing. Three or four years thereafter, a criminal investigation regarding the Kims was initiated. At that time, Respondent voluntarily admitted to the IRS that he had given the IRS only partial records. He then cooperated in the investigations performed by the IRS and the United States Attorney’s Office regarding the Kims’ audit. Although never required to do so, he voluntarily appeared at several meetings connected with those investigations. Respondent no longer has either a personal or a professional relationship with the Kims.

7. Respondent is 43-years-old. He came to this country from his native Korea in 1983 having already received an undergraduate degree in metallurgy. From June of 1985 to June of 1987, he attended California State University at Northridge where he earned a Masters degree in Business Administration. He supported himself during that time period by working as a janitor and a tutor.

8. Respondent has been married to his wife for 18 years. They have two children, ages 12 and 15. Respondent is and has been the sole support of his family.

9. Respondent is very active in his church where he serves as a Deacon. For the past five years, he has served as the church's treasurer. That position requires him to spend 3-4 hours after church each week performing bookkeeping services and other administrative duties.

10. Respondent enjoys an excellent reputation in his community for honesty and integrity. He has had no other negative involvement in the criminal justice system and has not had his CPA license subject to discipline before or since the filing of the instant Accusation.

11. Respondent accepts full responsibility for his wrongdoing. He is extremely remorseful for his lack of good judgment and for his criminal conduct. He has made changes in his accountancy practice in order to ensure that no similar conduct ever occurs. For example, he left his sole practice and entered a practice with three other CPAs. This enables him to question his partners on various issues so as to avoid mistakes. He also tells each of his clients that he will represent only the truth to governmental agencies.

12. Pursuant to Business and Professions Code section 5107, Complainant's counsel requested that Respondent be ordered to pay to the Board \$5730.60 for its costs of investigation and prosecution of the case. Respondent's counsel strongly objected to Complainant's Certification of Costs on grounds that the amount of time allegedly spent on the file was "astonishing." Complainant's counsel made no attempt to explain or justify the amount of time claimed. For the reasons set forth below, the requested costs are reduced to \$1231.30.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the suspension or revocation of Respondent's Certified Public Accountant Certificate pursuant to Business and Professions Code sections 490 and 5100(a), for conviction of a crime, as set forth in Findings 3, 4, 5 and 6.

2. Cause exists for the suspension or revocation of Respondent's Certified Public Accountant Certificate pursuant to Business and Professions Code section 5100(i), for knowingly preparing and disseminating false, fraudulent and materially misleading financial information, as set forth in Findings 3, 5 and 6.

In August of 1995, Respondent violated the public trust in a manner directly related to the qualifications, functions and duties of a certified public accountant. The conduct of a CPA who intentionally defrauds the IRS can neither be excused nor condoned. Respondent, however, does not offer an excuse and does not seek to have his conduct condoned. Rather, he admits his culpability and accepts full responsibility for it.

Respondent has made substantial strides toward rehabilitation by, among other things, completing his probation without incident and changing his professional practice in a manner calculated to minimize the risk of recurrence. The success of those changes is evidenced by the fact that no other incidents of inappropriate practice have come to light since 1995. These factors, coupled with his acceptance of responsibility for his wrongdoing, militate against outright revocation of his certificate.

Nonetheless, one troubling factor remains. Respondent's motives and reasoning for his criminal conduct were never made clear. Certainly, his actions were not part of an overall pattern of practice. In fact, they were limited to the services of only one client. However, no explanation was offered for either Respondent's decision to provide the IRS with only limited documentation when full documentation was available and within his custody, possession and control, or for his decision to place some of the documents near the dumpster where they stood an excellent chance of permanent removal from the premises. Absent an understanding of his motives, it is difficult to feel confident that Respondent is completely rehabilitated and that he runs a minimal risk of recidivism.

In light of the above, although outright revocation would constitute overly harsh discipline, a properly conditioned probationary license is necessary to adequately protect the public interest. A period of actual suspension must necessarily be included in the terms of probation in order to give Respondent the opportunity to reflect on the importance of complete honesty and integrity in his profession.

4. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 5107, as set forth in Finding 12.

Business and Professions Code section 5107 states in pertinent part:

“(a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i), or (j) of Section 5100, or involving a felony conviction in violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of subdivision (h) of Section 5100, to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

“(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

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“(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board’s decision is final unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

“(d) The finding of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).”

Title 1, California Code of Regulations, section 1042 states in relevant part:

“(a) When an agency requests costs of investigation and prosecution of the case, it shall allege in the pleading a demand for the costs and the authorizing statute or regulation.

“(b) Unless the applicable cost recovery statute provides otherwise, evidence relating to cost recovery shall be submitted in the following manner:

“(1) Evidence relating to costs shall be submitted by Declaration executed by the agency or its designee.

“(2) A Declaration in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the ALJ can determine the costs incurred in connection with the matter and the reasonableness of the costs (for example, a general description of tasks performed, the time spent on each task, and the method of calculating the cost for the services).

“(3) Services provided by other persons shall be supported by a Declaration by that person providing each service which should contain sufficient information by which the ALJ can determine the costs incurred in the matter and the reasonableness of the costs (for example, a general description of the tasks performed, the time spent on each task and the hourly rate or other form of compensation). In lieu of the service provider’s Declaration, the agency or its designee may attach to its Declaration copies of time and billing records upon which costs were incurred by the agency.

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“(4) For other costs incurred by the agency, the bill, invoice, or other similar document reflecting the cost incurred by the agency should be attached to the Declaration submitted by the agency or its designee.

“(5) Where the agency seeks a cost award based on an estimate of actual costs incurred, the Declaration should explain the reason actual cost information is not available.

“(6) The ALJ may, at his or her discretion, permit any party to present testimony relevant to the imposition and reasonableness of costs.”

Complainant’s only evidence of costs is the Certification of Costs (Complainant’s Exhibit 3), consisting of a declaration by the Board’s Executive Officer. It sets forth the number of hours spent by, and the hourly rates of one or more investigators, one or more Deputies Attorney General, and one or more Legal Assistants, as well as monetary totals for those amounts of time. The identities or number of those who performed those services are not disclosed. An additional sum of \$262.00 is added as “miscellaneous costs.” The nature of those costs is not defined.

Specifically, Complainant breaks down the requested costs as follows:

<u>Source</u>	<u>Time</u>	<u>Rate</u>	<u>Total</u>
Investigative Costs 2000/2001 Fiscal Year	5.0 hrs.	\$ 75.32/hr.	\$ 376.60
Attorney General 2000/2001 Fiscal Year	2.0 hrs.	\$106.00/hr.	\$ 212.00
Attorney General 2001/2002 Fiscal Year	36.0 hrs.	\$112.00/hr.	\$4032.00
Legal Assistant 2000/2001 Fiscal Year	13.5 hrs.	\$ 53.00/hr.	\$ 715.50
Legal Assistant 2001/2002 Fiscal Year	2.5 hrs.	\$53.00/hr.	\$ 132.50
Miscellaneous Costs			<u>\$ 262.00</u>
Total			\$5730.60

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Although Complainant's Certification of Costs constitutes evidence, it does not rise to the level of prima facie evidence as referenced in Business and Professions Code section 5107(b). Thus, it fails to establish a rebuttable presumption of reasonableness, in that neither a certified copy of actual costs was attached, nor was a showing of unavailability of actual costs made.

The costs claimed in Complainant's Certification of Costs are substantially excessive. Complainant's entire case consisted of four exhibits (including the Certification of Costs) and a brief cross-examination of Respondent. Complainant did not call any witnesses in her case-in-chief. The only exhibit originating from outside the Board itself was the exhibit containing the court documents relating to Respondent's criminal conviction. Presumably, those documents were obtained either by an investigator or a legal assistant. Since they came from the United States District Court, Central District of California, which is located very close to the Attorney General's Office in downtown Los Angeles, it is extremely unlikely that much time was expended in obtaining them. Further, given the scanty nature of Complainant's case, the Deputy Attorney General's trial preparation time is extremely unlikely to have exceeded eight hours, particularly with the aid of a legal assistant. Additionally, since no explanation was offered as to the nature of the "miscellaneous costs" (much less a certified copy of the actual costs or a showing of the actual costs' unavailability), those costs are disallowed.

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Of course, it is possible, albeit not established, that certain tasks were performed by the investigator(s), the Deputy Attorney General and/or the legal assistant(s) that did not find their way into the hearing. Complainant's failure to establish such expenditures of time, particularly in light of her failure to establish prima facie evidence of reasonableness, is fatal to such expenditures' inclusion in the cost award. Accordingly, the reasonable amounts of recoverable costs are broken down as follows:

<u>Source</u>	<u>Time</u>	<u>Rate</u>	<u>Total</u>
Investigative Costs 2000/2001 Fiscal Year	2.5 hrs.	\$ 75.32/hr.	\$ 188.30
Attorney General 2000/2001 Fiscal Year	2.0 hrs.	\$106.00/hr.	\$ 212.00
Attorney General 2001/2002 Fiscal Year	6.0 hrs.	\$112.00/hr.	\$ 672.00
Legal Assistant 2000/2001 Fiscal Year	2.0 hrs.	\$ 53.00/hr.	\$ 106.00
Legal Assistant 2001/2002 Fiscal Year	1.0 hrs.	\$53.00/hr.	\$ 53.00
Miscellaneous Costs			<u>\$ 0.00</u>
Total			\$1231.30

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant License No. 55696 issued to Respondent, Jong H. Kwak, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Respondent's license shall be actually suspended for a period of 45 days. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of Respondent's compliance with probation terms and conditions.

6. Respondent shall be subject to, and shall permit, a practice investigation of Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

7. Respondent shall comply with all final orders resulting from citations issued by the Board of Accountancy.

8. In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

9. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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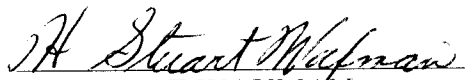
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10. Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination within ninety (90) days of the effective date of this Order. If Respondent fails to pass the examination within the time period provided or within two attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes and successfully passes the exam, has submitted proof of same to the Board, and has been notified by the Board that he may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation. Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of Respondent's license.

11. Respondent shall reimburse the Board \$1231.30 for its investigation and prosecution costs. The payment shall be made within 120 days of the date the Board's decision is final.

12. Upon successful completion of probation, Respondent's license will be fully restored.

DATED: June 17, 2002


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

BILL LOCKYER, Attorney General
of the State of California
MICHEL W. VALENTINE,
Deputy Attorney General, State Bar No. 153078
300 S. Spring Street, Suite 500
Los Angeles, California 90013
Telephone (213) 897-1034

Attorney for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JONG H. KWAK
3600 Wilshire Blvd., #730
Los Angeles, CA 90010

Certified Public Accountant
Certificate No. 55696

Respondent.

No. AC-2001-15

ACCUSATION

COMES NOW Complainant Carol B. Sigmann, who as cause for
disciplinary action, alleges:

1. Complainant Carol B. Sigmann makes and files this Accusation
solely in her official capacity as Executive Officer, California Board of Accountancy
(hereinafter "Board"), Department of Consumer Affairs, State of California.

LICENSE HISTORY

2. On May 11, 1990, the Board issued Certified Public Accountant
Certificate No. 55696 to Jong H. Kwak (hereinafter "Respondent") to Practice
accountancy. Said certificate expired on June 30, 1991, due to non-payment of renewal
fees and non-compliance with continuing education regulations. The Certificate was
renewed effective August 2, 1991, through June 30, 1993, upon receipt of the renewal

1 fee and declaration of compliance with the continuing education regulations. Said
2 certificate expired on June 30, 2001, due to non-payment of renewal fees and non-
3 compliance with continuing education regulations. The certificate was renewed
4 effective September 14, 2001, through June 30, 2003, upon receipt of the renewal fee
5 and declaration of compliance with the continuing education regulations.

6 **STATUTES AND REGULATIONS**

7 3. This Accusation is made in reference to the following statutes of
8 California Business and Professions Code ("Code"):

9 a. Section 5100(a) provides that the Board may revoke, suspend or
10 refuse to renew any permit or certificate issued by the Board, or may
11 censure the holder of any such permit or certificate for unprofessional
12 conduct which includes, but is not limited to, a conviction of any crime
13 substantially related to the qualifications, functions and duties of a certified
14 public accountant.

15 b. Section 5100(i) provides that the Board may revoke, suspend or
16 refuse to renew any permit or certificate issued by the Board, or may
17 censure the holder of any such permit or certificate for unprofessional
18 conduct which includes, but is not limited to, the knowing preparation,
19 publication or dissemination of false, fraudulent, or materially misleading
20 financial statements, reports or information.

21 c. Section 5107 provides, in part, that the Board may request the
22 administrative law judge, as part of the proposed decision in a disciplinary
23 proceeding, to direct any holder of a permit or certificate found in violation
24 of section 5100(a), (b), (c), (h), (i), or (j), to pay to the Board all reasonable
25 costs of investigation and prosecution of the case, including, but not
26 limited to, attorney's fees.
27

1 d. Section 490 of the Code provides that the Board may suspend or
2 revoke the certificate of a certified public accountant on the ground that
3 the certified public accountant has been convicted of a crime, if the crime
4 is substantially related to the qualifications, functions, or duties of the
5 profession for which the certificate was issued.

6 4. Title 16, California Code regulations, section 99 provides that a
7 crime is considered by the Board to be substantially related to the qualifications,
8 functions, or duties of a certified public accountant if to a substantial degree it evidences
9 the present or potential unfitness of the certified public accountant to perform the
10 functions authorized by the certificate in a manner consistent with the public health,
11 safety or welfare, including but not limited to those involving fiscal dishonesty, or breach
12 fiduciary responsibility of any kind, or dishonesty, fraud, or gross negligence in the
13 practice of public accountancy or in the performance of bookkeeping operations.

14 5. Respondent has subjected his license to discipline pursuant to
15 Business and Professions Code Sections 5100 and 490 for conviction of a substantially
16 related crime within the scope of Business and Professions Code Sections 5100(a) and
17 490 by reason of the following facts:

18 a. On or about July 31, 2000, Respondent was convicted on a plea of
19 Guilty, to one count of violating U.S. Code: Title 26, Section 7207
20 (delivering fraudulent documents to the Internal Revenue Service), a
21 misdemeanor, in the United States District Court, Central District of
22 California, under case No. CR00-292-SVW, entitled United States of
23 America v. Jong H. Kwak. Respondent was placed on probation for one
24 year under the following terms and conditions: The Respondent shall
25 comply with the rules and regulations of the U.S. Probation Office and
26 General Order 318, perform 200 hours of community service, and pay the
27

1 United States a total fine of \$5,000.00, which shall bear interest as
2 provided by law.

3 b. On or about August 22, 1995, Respondent willfully delivered and
4 disclosed to the Secretary of the Treasury, or a designated representative
5 thereof, documents known by Respondent to be fraudulent and false as to
6 a material matter, namely, documents which purported to represent all of
7 the invoices for purchases of goods sold by taxpayers Dong Chol Kim and
8 Myung Sook Kim for the tax year 1993, when in fact, Respondent well
9 knew that those documents were fraudulent and false as to a material
10 matter, in that they failed to disclose invoices for the taxpayers' purchases
11 of goods with cash, in the tax year of 1993.

12 6. Respondent has further subjected his license to discipline pursuant
13 Section 490 of the Code in that Respondent was convicted of a crime substantially
14 related to the qualifications, functions or duties of a certified public accountant, as set
15 forth in paragraph 5, supra.

16 7. Respondent has further subjected his license to discipline pursuant
17 to Section 5100(i) of the Code in that Respondent knowingly prepared and
18 disseminated false, fraudulent and materially misleading financial information as set
19 forth in paragraph 5B.

20 WHEREFORE, Complainant prays that a hearing be held and that
21 following said hearing that the California Board of Accountancy make its order:

- 22 1. Revoking, suspending or otherwise imposing discipline upon
23 Certified Public Accountant Number 55696 issued to Respondent;
- 24 2. Issue an order compelling the Respondent to reimburse the Board
25 the reasonable costs and its investigation and prosecution of this
26 matter, up to the day of hearing;
27

3. Taking such other and further action as the Board deems proper.

DATED: October 30, 2001

Carol Sigman

CAROL B. SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California

Complainant